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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,712	01/15/2004	Keith Lucas	41963-8002.US01	6561
22918	7590	10/05/2007	EXAMINER	
PERKINS COIE LLP			BAROT, BHARAT	
P.O. BOX 2168			ART UNIT	PAPER NUMBER
MENLO PARK, CA 94026			2155	
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			10/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/758,712	<b>Applicant(s)</b> LUCAS ET AL.	
	<b>Examiner</b> Bharat N. Barot	<b>Art Unit</b> 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 1-43 are presented for examination.

**Specification**

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

**Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 31-41 are rejected under 35 U.S.C. 101 because the claimed inventions of the claims 31-41 are directed to non-statutory subject matter. Claim 31 recited "A data structure comprising: an exercise object..., a workout object..., and a program object..." which is non-statutory for at least the reason that is as not being tangibly embodied in a storage medium and in manner so as to be executable by a computer/processor. Further, a collection of objects, per se, is not an actual data structure, instead being non-functional descriptive material. Thus the rejection under 101 as being an abstract idea and not being in a manner so as to be executable.

Other dependent claims, which are not specifically cited above are also rejected because of the deficiencies of their respective parent claims.

**Claim Rejections - 35 USC § 102**

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Aggarwal et al (U.S. Patent No. 6,917,969). Aggarwal's patent meets all the limitations for claims 1-43 recited in the claimed invention.

7. As to claim 1, Aggarwal et al teach a communication system for an interactive device (see abstract; and figure 1) comprising: a data conduit operative for transferring XML formatted data; an Internet framework, coupled to a first end of the data conduit, operative for sending and receiving XML formatted data; and an interactive device framework of the interactive device, coupled to a second end of the data conduit, operative for sending and receiving XML formatted data (figure 1; column 1 lines 21-45; column 2 line 8 to column 3 line 8; column 4 line 18-61; and column 6 lines 18-39).

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8. As to claims 2-3, Aggarwal et al teach that the Internet framework further comprises applications that utilize the XML formatted data; and the interactive device framework further comprises applications that utilize the XML formatted data (figure 1; column 1 lines 21-45; column 2 line 8 to column 3 line 8; column 4 line 18-61; and column 6 lines 18-39).

9. As to claim 4, Aggarwal et al teach that the interactive device is a handheld device (column 1 lines 35-45).

10. As to claims 5-11, the XML data format can be used for sending, receiving, and controlling different types of object for data communication in the network, which is known and inherent in the art at the time the invention was made.

11. As to claims 12-14, transferring the XML formatted data via a serial bus (LAN), a firewire (VPN), and a wireless network (WLAN) is known and inherent in the art at the time the invention was made.

12. As to claims 15-30, they are also rejected for the same reasons set forth to rejecting claims 1-14 above, since claims 15-30 are merely a method of operations an for the apparatus defined in the method claims 1-14.

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13. As to claims 31-43, claims 31-43 do not teach or define any new limitations than above claims 1-30; therefore, they are rejected for the similar reasons.

**Additional Reference**

14. The examiner as of general interest cites the following reference.

a. Lozano et al, U.S. Patent No. 7,168,003.

**Contact Information**

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Bharat Barot** whose Telephone Number is **(571) 272-3979**. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. Most facsimile-transmitted patent application related correspondence is required to be sent to the Central FAX Number **(571) 273-8300**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Saleh Najjar**, can be reached at **(571) 272-4006**.

Patent Examiner Bharat Barot

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September 17, 2007

*Bharat Barot.*  
**BHARAT BAROT  
PRIMARY EXAMINER**